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10/634,328	08/04/2003	Kenneth Thompson	MCC-44532	6778

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/634,328
Filing Date: August 04, 2003
Appellant(s): THOMPSON ET AL.

Kelly, Lowry and Kelley, LLP.
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 11/8/05 appealing from the Office action mailed 6/30/05.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 27,28,30-32,41,42,44-46 and 48 stand rejected under 35 U.S.C. 102(e) as being anticipated by Hebbecker. Hebbecker discloses all of the subject matter as set forth in the claims and is identical to the invention as broadly recited. Some of the claimed elements clearly disclosed by the reference are: a chip element (4) and a strip element (6). The device can be made of several materials (see column 2, lines 30-35). In regard to claims 31 and 46, applicant's attention is directed to column 2, lines 39-49).

Claims 29,34-37 and 43 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Hebbecker. Hebbecker discloses the claimed invention except for the claimed locations as set forth in the claims. It would have been obvious to one having ordinary skill in the art at the time the invention was made to locate the chip elements in the claimed locations, since it has been held that rearranging parts of an invention involves only routine skill in the ad. In re Japikse, 86 USPQ 70.

Claims 38 and 47 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hebbecker in view of Carides et al. Hebbecker discloses the claimed invention except for a scratch off foil treatment. Carides et al. teaches that it is well known in the art to use a scratch off foil treatment to obscure indicia. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide Hebbecker with a scratch off foil treatment to obscure indicia in the manner as taught by Carides et al. in order to add another degree of security to the document.

(10) Response to Argument

Appellant argues that "On the face of the disclosures, the Hebbecker electronic identification dog tag is completely nonanalogous to the multi-purpose card of the present invention" which is directed to utilizing two different integrated circuit chips containing information relating to different entities for selective charging or redeeming for that entity. Appellant further argues that " Hebbecker further fails to identically show every element of the claimed invention. Independent claim 27 recites "first and second redemption or charging means in the form of first and second integrated circuit chips, each integrated circuit chip containing information relating to a different entity".

The examiner submits that Hebbecker discloses in its abstract that one chip can contain data that relates to personal identification numbers and the other to training or special skills of the wearer:

"The memory or microprocessor structure permits a very flexible directory structure. Thus,in the main memory directory, for example, one can store global card data, such as personal identification numbers (PKZ), nation, name (NN), and blood type (A Rh+). Moreover, in the data fields of the main directory, one can store access authorizations, and, in the subdirectories, for example, the training or special skills of a person wearing this tag."

Clearly these data caches have relevance to two separate entities: one concerned with security and the other concerned with education and/or ability. This data can be used, as, is customary in the military, to redeem supplies, training information, etc. Hence Hebbecker discloses the claims as broadly presented. Further applicant argues that one skilled in the art would view significant differences between the assembly of Hebbecker and the claimed invention. However the examiner submits it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be

employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex pa/e Masham, 2 USPQZd 1647 (1987).

Appellant further argues that dependent claims 30 and 45 recite a laminate layer including a hologram, overlying and attached to the base layer and Hebbecker fails to teach or suggest such recitation. The examiner submits that Hebbecker recites at column 2, lines 30-35:

"The identification card or tag itself can either be made of a very resistant plastic, glass, ceramic, or the like, the particular data carrier or memory device being embedded with or without intelligence in the form of a chip, magnetic strip or hologram."

In response to appellant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See In re McLaughlin, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Hence, It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide Hebbecker with a scratch off foil treatment to obscure indicia in the manner as taught by Carides et al. in order to add another degree of security to the document.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

wf

Conferees:

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